Model BIA Practice Manual

Chapter 6 – Stays and Expedite Requests

6.4 – Expedite Requests

(a) Standards

Expedited review means the Board will prioritize adjudication of a case ahead of others on its docket. The Board may grant expedited review where a compelling issue warrants urgent attention to: (1) prevent irreparable harm to an individual; (2) protect the integrity of the adjudicatory process; (3) safeguard U.S. taxpayer resources; (4) protect the U.S. citizenry from potential public safety or national security threats; or (5) for other good cause shown.

(b) Types of Expedited Requests

Expedited review may be granted in one of two ways: presumptively or by motion.

(1) Presumptive Expedited Review

Appeals filed under § 9.3(c)(2) and certified by counsel under § 9.3(d)(5)(ii) are presumptively entitled to expedited review. These *Fraud Appeals* challenge previously approved visa petitions based on newly discovered evidence of marriage fraud that triggers a statutory bar under INA § 204(c). No separate motion is required.

This presumption reflects Congress's clear judgment in the Immigration Marriage Fraud Amendments of 1986 that marriage fraud is uniquely corrosive to the integrity of the immigration system and must be met with zero tolerance. In keeping with that mandate, these appeals receive priority review.

Such cases present compounding harms across multiple domains:

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- **Harm to Individual Petitioners** – including prolonged financial liability under the Form I-864, false accusations of abuse, reputational damage, and significant emotional and psychological distress. The approved petition may also be misused in family court proceedings or obstruct efforts to remedy legal consequences of the fraud.

- **Harm to the U.S. Citizenry** – including diversion of taxpayer-funded benefits, abuse of public trust, and diminished faith in the integrity of immigration and family law systems.

- **Harm to Federal Institutions and NGOs** – where scarce adjudicative, investigative, or humanitarian resources are misallocated to fraudulent claims, delaying relief for legitimate applicants and straining system capacity.

- **Harm to Lawful Immigrants** – by diluting public support for family-based immigration, fueling suspicion or stigma, and diverting processing capacity and credibility away from individuals who comply with legal requirements in good faith.

Additionally, credible allegations of marriage fraud may implicate public safety or national security risks—some of which may not yet be fully understood at the time of filing. Timely adjudication helps safeguard the visa petition system, prevent further misuse of immigration benefits, and ensure integrity in family-based immigration adjudications. The Board plays a vital role in protecting the integrity of the immigration system, including by exercising its authority to review prior approvals of marriage-based petitions and to serve as an essential check and balance on agency error, omission, or deception.

The Board may decline expedited treatment of a certified Fraud Appeal only where:

- The certification is materially deficient;

- The newly discovered evidence is prima facie not credible or material;

- The appeal is facially frivolous, repetitive, or pursued for an improper purpose; or

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- Other extraordinary case management considerations require regular docketing.

(2) Expedited Review by Motion

In all other cases, expedited review may be granted only by written motion. These requests are disfavored and will only be granted where the moving party demonstrates compelling and urgent reasons for priority adjudication. Factors the Board may consider include:

- Systemic failures in adjudication;
- Imminent removal;
- A minor aging out of derivative status;
- Serious medical emergency;
- Risk of mootness or waste of judicial or governmental resources;
- National interest, public safety, or statutory integrity concerns; or
- Other good cause shown.

The motion must be filed in accordance with Chapter 5.2 (Filing a Motion) and be clearly labeled "MOTION TO EXPEDITE." The motion must include a caption with the case name and A-number, and a clear explanation of the:

- Basis for expedited review;
- Factual background of the case;
- Applicable law(s);
- Relief sought; and
- Why standard processing would cause undue prejudice.

Use of a cover page and supporting documentation is strongly encouraged. *See* Appendix E (Cover Pages). In a genuine emergency, a party may contact the

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Clerk's Office by telephone (see Appendix A), but a written motion must still follow immediately.

(c) Board Response

The Board will consider all properly filed requests for expedited review. If a request is granted, the Board will prioritize the case without notifying the parties. For administrative reasons, the Board does not issue written responses to most requests. However, if a certified Fraud Appeal under § 9.3(c)(2) is denied expedited treatment, the Board will notify the petitioner's counsel and briefly state the reason for the denial.

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9.3 – Visa Petition Decisions

(a) Jurisdiction

The Board has appellate jurisdiction over family-based immigrant visa petitions filed under section 204 of the Immigration and Nationality Act, with the exception of petitions on behalf of certain orphans. *See* 8 C.F.R. § 1003.1(b)(5); *see also* BIA Practice Manual § 1.4 (Jurisdiction and Authority).

(b) Standing

Only the petitioner, not the beneficiary or a third party, may appeal an adverse decision of a visa petition. *See Matter of Sano*, 19 I&N Dec. 299 (BIA 1985). Self-petitioners – including battered spouses, battered children, and certain relatives of deceased citizens – also have standing to appeal. *See* Immigration and Nationality Act §§ 204(a)(1)(A)(ii), (iii), (iv); 204(a)(1)(B)(ii), (iii), and 204(l); 8 C.F.R. § 204.2.

(c) Types of Appeals

Appeals from adverse decisions of visa petitions include:

(1) Denial Appeals – Petitioners may appeal a denial of a visa petition.

(2) Fraud Appeals – Petitioners may appeal a previously approved visa petition based on newly discovered evidence of marriage fraud that triggers a statutory bar under INA § 204(c).

> ***Note**: Unlike other forms of immigration fraud, which may be addressed through waivers or considered in discretionary contexts, marriage fraud directly affects statutory eligibility for petition approval. In many cases, sufficient evidence of the fraud may not be available until well after the original petition has been approved, necessitating a procedural mechanism for subsequent review.

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(d) Filing the Appeal

(1) How to file – Appeals of visa petition decisions are filed using Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer. 8 C.F.R. § 1003.3(a)(2).

> **Note*: This form is different from Form EOIR-26 used for appeals from decisions of Immigration Court proceedings.

The appeal form must be signed by the petitioner, not the beneficiary. The rare exceptions to that rule are those cases in which the alien "self-petitions," such as battered spouses and children, certain widows and widowers, and applicants seeking temporary admission despite being inadmissible (section 212(d)(3)(A) waiver).

(2) Where to file – Form EOIR-29 is filed directly with DHS, in accordance with the applicable regulations, any instructions provided in the DHS decision, any publicly available DHS guidance, and any instructions appearing on the reverse of Form EOIR-29. *See generally* 8 C.F.R. § 1003.3(a)(2).

(i) Denial Appeals – A *Denial Appeal* must be filed with the DHS office having administrative control over the petition record.

(ii) Fraud Appeals – A *Fraud Appeal* must be filed with the DHS office having administrative control over the petition record, or with any online portal that DHS may designate for appeals of previously approved visa petitions based on fraud.

If DHS fails to confirm the location of the petition record in response to a reasonable inquiry from the petitioner's representative, the petitioner may file Form EOIR-29 with USCIS Office of Chief Counsel which shall constitute constructive service, provided that the petitioner's representative certifies under penalty of perjury that DHS has failed to disclose the record's location despite reasonable inquiry and good-faith efforts to obtain it. *See* 6 U.S.C. § 271(d) (vesting ultimate responsibility

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for representing USCIS in visa petition appeal proceedings in the Office of the Chief Counsel).

***Note**: A good-faith effort shall include, at a minimum, contacting USCIS customer service and documenting the request in writing.

(3) When to file –

(i) Denial Appeals – The deadline for *Denial Appeals* is 30 days from the date of service of the decision being appealed. 8 C.F.R § 1003.3(a)(2).

(ii) Fraud Appeals – The deadline for *Fraud Appeals* is subject to equitable tolling, provided that: (1) the petitioner pursued their rights with reasonable diligence; and (2) extraordinary circumstances outside the petitioner's control prevented timely filing. *See Menominee Indian Tribe v. United States*, 577 U.S. 250 (2016); *Holland v. Florida*, 560 U.S. 631 (2010); *Lawrence v. Florida*, 549 U.S. 327, 336 (2007); *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005); *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 96 (1990) (recognizing that equitable tolling may apply where a litigant "has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass" and citing prior fraud-based tolling cases); *accord Matter of Morales-Morales*, 28 I&N Dec. 708, 716 (BIA 2023).

(aa) Extraordinary Circumstance – Circumstances outside the petitioner's control may include:

- Marriage fraud committed by the beneficiary that was not reasonably discoverable earlier;
- Prior legal proceedings pursued in good faith to obtain evidence through discovery;
- An immigration attorney's refusal to provide the petitioner with proper access to a joint representation file likely to contain evidence of fraud;

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- DHS failure to confirm the location of the petition record after documented, good-faith efforts to locate it.

(bb) Reasonable Diligence – Examples of diligence in pursuing appellate rights may include:

- Retaining a licensed attorney, as defined in 8 C.F.R. § 1001.1(f), who is subject to the EOIR's rules and procedures governing professional conduct, to: (1) investigate the facts underlying a fraud claim, including evidence collection and analysis, (2) verify whether the evidence constitutes a credible claim of marriage fraud under federal law, and (3) prepare a detailed evidentiary record for the Board's review.

- Pursuing rights in a state court in which formal discovery procedures may be available to collect material evidence to support a petitioner's appeal before the Board.

(4) Fee – The filing fee for a petition-based appeal is $110. *See* 8 C.F.R. § 1003.8(b). Unlike appeals of Immigration Judge decisions, the fee for a petition-based appeal is filed directly with DHS, in accordance with DHS instructions.

(5) Representation –

(i) Discretionary Representation –

(aa) Form Used – A practitioner may represent a petitioner before the Board by filing Form EOIR-27, Notice of Appearance.

*Note: This form is different from USCIS Form G-28, which is used to enter appearance before DHS. The Board does not recognize Form G-28 for appearances before the Board.

(bb) Place of Filing – Form EOIR-27 should be filed directly with DHS along with Form EOIR-29, Notice of Appeal. *See* 8 C.F.R. § 1292.4(a); BIA Practice Manual § 2.1 (Entering an Appearance as the Practitioner of Record).

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(ii) Mandatory Representation – For *Fraud Appeals*, a petitioner must be represented by a licensed attorney practitioner, as defined in 8 C.F.R. § 1001.1(f) and who is subject to the EOIR rules and procedures governing professional conduct, who certifies under penalty of perjury that they have:

- Carefully reviewed the evidence of fraud submitted on appeal;
- The evidence is credible and warrants the Board's review; and
- Petitioner has acted with diligence in pursuing their rights.

(iii) Prohibited Representation – Limited appearances for document assistance using Form EOIR-60 are not permitted in visa petition appeals. Any Form EOIR-60 will be rejected. *See* Chapter 2.1(c)(3).

(6) Supporting briefs – Briefs, if submitted, should be filed with DHS at the same location as Forms EOIR-27 and EOIR-29, and within any briefing schedule DHS may set. *See* 8 C.F.R. § 1003.3(c)(2). The Board may, in rare circumstances, authorize direct filing of briefs. Unless otherwise directed, briefs should comply with Chapter 3.3 (Documents) and Chapter 4.6 (Appeal Briefs).

(7) Evidence –

(i) Denial Appeals – The Board does not consider new evidence for *Denial Appeals*. *See* BIA Practice Manual § 4.8(c).

(aa) New Evidence Allowed – If new evidence is submitted in the course of an appeal, the submission may be deemed a motion to remand the petition to DHS for consideration of that new evidence. If the petitioner wishes to submit new evidence, the petitioner should articulate the purpose of the new evidence and explain its prior unavailability. Any document submitted to the Board should comport with the guidelines set forth in Chapter 3.3 (Documents).

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(bb) New Evidence Prohibited – The Board will generally not consider new evidence – or remand the petition – where the proffered evidence was expressly requested by DHS and the petitioner was given a reasonable opportunity to provide it before the petition was adjudicated by DHS. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(cc) Administrative Notice – The Board may take administrative notice of commonly known facts such as official government records. *See* 8 C.F.R. § 1003.l(d)(3)(iv)

(ii) Fraud Appeals –

(aa) Evidentiary Requirement – For *Fraud Appeals*, a petitioner must submit any and all evidence of marriage fraud at the time of filing Form EOIR-29. Any newly discovered evidence submitted at the time of filing Form EOIR-29 with DHS is considered part of the administrative record for purposes of Board review.

> ***Note**: This evidence is initially reviewed by DHS prior to transmittal of the petition record to the Board. Accordingly, such evidence shall not be treated as "new evidence" requiring remand, provided it was included with the original filing and reviewed by DHS.

(bb) No Motion of Remand Required – For *Fraud Appeals*, a separate motion to remand is not required under 8 C.F.R. § 1003.1(d)(3)(iv), as such evidence is not considered 'new' for purposes of Board review. That regulation requires a motion to remand only where new evidence is submitted on appeal and has not been previously reviewed by DHS. Because fraud appeals filed through DHS allow for such evidence to be reviewed prior to transmittal, no additional motion is necessary.

If the Board determines that a remand is otherwise appropriate, it may do so under its general remand authority. However, the Board

will not remand solely to permit reconsideration of fraud evidence that has already been reviewed by DHS in accordance with this chapter.

(cc) Final Judgments of Nullity – In evaluating the existence of a valid marriage under the place-of-celebration rule or in assessing whether a marriage was bona fide for federal immigration purposes, the Board will take administrative notice of final judgments of nullity issued by a court of competent jurisdiction. 8 C.F.R. § 1003.1(d)(3)(iv).

(8) Stipulations – The Board encourages the parties, whenever possible, to stipulate to any facts or events that pertain to the adjudication of the visa petition.

(d) Processing

Once an appeal has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal. After the Board receives the record from DHS, the Board issues a notice to the parties acknowledging it has the record and the appeal.

(1) Record on appeal – The record on appeal consists of all decisions and documents in the petition record, including some or all of the following items:

- Visa petition and supporting documentation;
- DHS notices and evidence requested by DHS notices;
- Notice of Appeal, including any briefs;
- Newly discovered evidence of fraud;
- The record of any prior DHS or Board action.

For *Fraud Appeals*, DHS is expected to review and incorporate all newly discovered evidence prior to transmitting the record to the Board. The Board will treat this evidence as part of the administrative record.

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(2) Briefing schedule – Briefing schedules, if any, are issued by DHS and are to be completed prior to the forwarding of the record to the Board. Accordingly, the Board generally does not issue briefing schedules in visa petition cases, except in the cases of *Fraud Appeals*. *See* Chapter 9.3(c)(6) (Supporting briefs).

(3) Status inquiries –

> **(i) DHS** – Until the record is received by the Board, all status inquiries must be directed to the DHS office where the appeal was filed. The Board has no record of the appeal until the petition record is received. Since the Board and DHS are distinct and separate entities, the Board cannot track or provide information on cases that remain within the possession of DHS.
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> **(ii) Board** – Confirmation that the Board has received a petition record from DHS may be obtained from the Clerk's Office. *See* Appendix A (Directory). The Board tracks petition-based appeals by the beneficiary's name and alien registration number ("A number"). All status inquiries must contain this information. *See* generally Chapter 1.6(a) (All Communications).

(5) Adjudication – Upon the entry of a decision, the Board serves the decision upon the parties by regular mail. An order issued by the Board is final unless and until it is stayed, modified, rescinded, or overruled by the Board, the Attorney General, or a federal court. An order is deemed effective as of its issuance date unless otherwise specified. See Chapter 1.4(d) (Board decisions).

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